

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2693 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SALIMKHAN HASAMKHAN PATHAN

Versus

DIRECTOR MEDICAL SERVICES ESIS

Appearance:

MR MM TIRMIZI for Petitioner

MR DA BAMBHANIA for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/05/98

ORAL JUDGEMENT

Rule. Service of rule is waived by learned Government Solicitor Mr. D.A. Bambhania for the respondent. The matter is taken up for final hearing today at the request of the learned advocates for the parties.

By means of this Special Civil Application under Article 226 of the Constitution of India, the petitioner seeks directions to the respondent for his reinstatement in

service as he was suspended on the basis of a criminal prosecution against him for the offences punishable under sections 147, 148, 149 and 302 of the Indian Penal Code and he was tried for the said offences in Special Case No. 59 of 1992 by the learned Sessions Judge at Kheda. It is further say of the petitioner that the learned Sessions Judge by order dated 26.3.1996 acquitted him as charges levelled against him were not proved. It is further say of the petitioner that against the said order of acquittal recorded by the learned Sessions Judge, appeal is preferred before this Court which is pending and the said appeal is not likely to be heard within a period of ten years looking to the backlog of cases. It is the say of the petitioner that the judgment recording acquittal holds good irrespective of the fact that the same has been carried by way of appeal and the same is admitted and, therefore, it is his right to be reinstated in service with full backwages.

The petitioner made several representations for his reinstatement after the judgment of acquittal was recorded by the learned Sessions Judge but no heed was paid to the said representations and, therefore, ultimately he preferred this petition before this Court seeking relief of reinstatement by necessary orders of this Court in exercise of extraordinary jurisdiction.

In support of his contention he also placed reliance on various decisions rendered by this Court relating to the law with respect to judgment and order of acquittal still holds the field and good irrespective of the fact that the State has carried the acquittal order in appeal.

When the matter came up for admission hearing this Court directed the respondent to take appropriate decision with regard to reinstatement of the petitioner in accordance with law pursuant to the recording of acquittal order by the learned Sessions Judge.

Learned Government Solicitor Mr. Bambhania makes a statement that the Government has already taken decision in pursuance of the order passed by this Court about reinstatement of the petitioner and the petitioner is likely to get the order after requisite procedure is completed, subject to the result of the acquittal appeal which is pending before this Court.

In view of the aforesaid statement, the petition is required to be allowed. Hence, the petition is allowed accordingly. The respondent is hereby directed to reinstate the petitioner subject to the result of the

acquittal appeal which is pending before this Court.
Rule is made absolute to the aforesaid extent. No order
as to costs.